

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*Carlsbad
P.M.-II*

FILE: B-217935

DATE: April 30, 1986

MATTER OF: Edward A. Quijano

DIGEST:

For entitlement to night pay differential for overtime work performed between 6 p.m. and 6 a.m. the overtime must be "regularly scheduled." An employee's claim for night pay differential for overtime performed between 1976 and 1980 on the basis of vague assertions of entitlement and information as to the number of overtime hours worked at night may not be favorably considered in the absence of evidence from the claimant or his agency showing that the overtime was regularly scheduled under the rules applied in Comptroller General decisions during the period in question.

Mr. Edward A. Quijano claims night differential for overtime hours he worked between 6 p.m. and 6 a.m. incident to his employment by the Veterans Administration between 1976 and 1980. We are unable to allow the night pay differential claimed because the documentary evidence before us does not show that the overtime worked at night qualified for night differential under the applicable rules.

In his original claim submitted to the Veterans Administration on September 19, 1980, when he was no longer employed by that agency, Mr. Quijano merely referred to our decision, B-193398, November 27, 1979, which is published at 59 Comp. Gen. 101, and furnished a list of the total hours of overtime he had worked each pay period during the period of his claim. In effect, he asked the Veterans Administration to identify the hours of night overtime and to determine which of those hours qualified for night differential under the referenced decision. The Veterans Administration identified the number of hours of overtime worked at night for calendar years 1977 and thereafter but did not determine whether any of these overtime hours qualified for night differential pay under the applicable rules, including those in the cited decision. The Veterans Administration also recorded the claim with our Claims Group on January 21, 1981, thus tolling the statute of limitations, but took no

035265

further action thereon until they submitted the claim to the Claims Group for direct settlement on March 16, 1983.

Our Claims Group by Settlement Certificate Z-2847914, June 28, 1984, disallowed night pay differential because Mr. Quijano had failed to provide evidence that the overtime worked at night was "regularly scheduled" as required by 5 U.S.C. § 5545(a). The settlement indicated that in 40 Comp. Gen. 397 (1961) "regularly scheduled" work was defined to mean work authorized in advance and scheduled to recur on successive days or after specified intervals and explained that claims must be substantiated by government records or other acceptable documentary evidence.


After Mr. Quijano responded that the Medical Center had the necessary records, the Claims Group on September 27, 1984, suggested to the Director of the Veterans Administration Medical Center, Long Beach, that he review the available documentation to determine whether Mr. Quijano had advance authorization to perform the overtime hours. The Medical Center Director advised Mr. Quijano on October 22, 1984, that there was no evidence to show that he had advance authorization to perform the overtime worked. Accordingly, there was no basis to support payment of night differential in addition to overtime pay.

Mr. Quijano asked us to review that settlement but presented no additional evidence regarding the circumstances surrounding the performance of overtime during the period of his claim. However, in January 1986, he forwarded statements of two individuals who assert that they were Mr. Quijano's fellow employees and one was the chief of his section. Those statements indicate only that overtime was normally approved in advance. They do not indicate just how frequently this was done, whether final approval by an authorized individual was obtained in advance or whether overtime was ever scheduled to recur on successive days or after specified intervals.

Mr. Quijano has the burden of proving that the night work was "regularly scheduled" and we have not been furnished with sufficient documentary evidence to show that it was "regularly scheduled." It is unfortunate that the adjudication of this claim was delayed to a point where it is difficult to reconstruct the facts surrounding the overtime

B-217935

work in question with sufficient accuracy to permit a definitive determination of the claimant's entitlement to be made. Nevertheless, we cannot authorize payment on mere speculation as to the facts involved or on the basis of the vague assertions of entitlement made by a claimant. Thus, lacking adequate documentation, we must deny the claim.

for 
Comptroller General
of the United States